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From-ADMIN DIVISION

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ICSD - CENTRAL FILE

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TO: Lester Nakamura  
Administrator ICSD FAX NO. 61422

FR: D. Erickson  
DEPARTMENT OF ATTORNEY GENERAL FAX NO. (808) 586-1372

RE: American Cadastre Inc "Protest"  
Here is a copy of §103D-701 HRS and related Administrative  
rules re protests. §103D-701 may have been amended this year.  
I have talked with Ruth Yamaguchi at SPO and she said  
she'd work with you on responding to the protest. I will  
be happy to review drafts before they're sent to American  
Cadastre.  
#####

ORIGINAL IS BEING MAILED TO YOU: YES/NO NO

PLEASE CALL WHEN RECEIVED: YES/NO

IF THERE ARE ANY PROBLEMS RECEIVING THIS MESSAGE, PLEASE CONTACT BELOW:

CONTACT PERSON: \_\_\_\_\_ PHONE: (808) 586-1255

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8/26/99  
Lester Nakamura

## 103D-501

## PUBLIC PROPERTY, CONTRACTING

invitation for bids or request for proposals when the contract is awarded under section 103D-302 or 103D-303. [L Sp 1993, c 8, pt of §2]

## PART VI. COST PRINCIPLES

[§103D-601] Cost principles rules required. The policy office shall adopt rules setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that if a written determination is approved at a level above the procurement officer, such cost principles may be modified by contract. [L Sp 1993, c 8, pt of §2]

## PART VII. LEGAL AND CONTRACTUAL REMEDIES

[§103D-701] Authority to resolve protested solicitations and awards. (a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or the head of a purchasing agency. The protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto.

(b) The chief procurement officer, the head of a purchasing agency, or a designee of either officer, prior to the commencement of an action in court concerning the controversy, may settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with rules adopted by the policy office.

(c) If the protest is not resolved by mutual agreement, the chief procurement officer, the head of a purchasing agency, or designee of either officer shall promptly issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestor of the protestor's right to review as provided in this part.

(d) A copy of the decision under subsection (c) shall be mailed or otherwise furnished immediately to the protestor and any other party intervening.

(e) A decision under subsection (c) shall be final and conclusive, unless fraudulent, or any person adversely affected by the decision commences an administrative proceeding under section 103D-709.

(f) In the event of a timely protest under subsection (a), no further action shall be taken on the solicitation or the award of the contract until the chief procurement officer, after consultation with the head of the using agency, or the head of the purchasing agency, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the State.

(g) In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees. [L Sp 1993, c 8, pt of §2]

[§103D-702] Authority to debar or suspend. (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer or the head of a purchasing agency, after consultation with the using agency and the department of the attorney general, may debar a person for

§3-126-63 Disclosure  
§3-126-64 Prehearing conference  
§3-126-65 Testimony  
§3-126-66 Record  
§3-126-67 Dismissal of requests for hearings  
§3-126-68 Hearings  
§3-126-69 Procedure at hearing  
§3-126-70 Motion to dismiss  
§3-126-71 Taking of further evidence  
§3-126-72 Proposed findings of fact and  
conclusions of law  
§3-126-73 Hearings officer's decision  
§3-126-74 Service of hearings officer's decision  
§§3-126-75 to 3-126-77 (Reserved)

#### Subchapter 6 Judicial Review

§3-126-78 Judicial review of contested cases  
§§3-126-79 to 3-126-85 (Reserved)

#### Subchapter 7 Judicial Action

§§3-126-86 to 3-126-95 (Reserved)

### SUBCHAPTER 1

#### AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS

§3-126-1 Definitions. (a) As used in this subchapter:

"Head of a purchasing agency" means the department head of any agency delegated the authority to enter into and administer contracts.

"Interested party" means an actual or prospective bidder, offeror, or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.

"Protestor" means any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.

"Using agency" means the affected agency that has used the goods, services, or construction supplied by

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the contractor. [Eff DEC 15 1995 ] (Auth: HRS  
§§103D-202, 103D-701) (Imp: HRS §103D-701)

§3-126-2 Complaint to procurement officer.  
Complainants should seek resolution of their complaints initially with the procurement officer or the office that issued the solicitation. Such complaints shall be made in writing. [Eff DEC 15 1995 ] (Auth: HRS  
§§103D-202, 103D-701) (Imp: §103D-701)

§3-126-3 Filing of protest. (a) Protests shall be made in writing to the chief procurement officer or the head of a purchasing agency, and shall be filed in duplicate within five working days after the protestor knows or should have known of the facts leading to the filing of a protest. A protest is considered filed when received by the chief procurement officer or the head of a purchasing agency. Protests filed after the five-day period shall not be considered.

(b) Protestors may file a protest on any phase of solicitation or award including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid or offer.

(c) To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the chief procurement officer or head of a purchasing agency. The written protest shall include as a minimum the following:

- (1) The name and address of the protestor;
- (2) Appropriate identification of the procurement, and, if a contract has been awarded, the contract number;
- (3) A statement of reasons for the protest; and
- (4) Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.

(d) The notice of protest shall be deemed communicated and filed within forty-eight hours from the time of mailing, if mailed as provided in this paragraph, or communicated and filed when received personally by the chief procurement officer or the head of the purchasing agency.

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(e) The chief procurement officer or the head of a purchasing agency shall submit a copy of the protest to the respective attorney general or corporation counsel within three working days of receipt of the written protest. [Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-701) (Imp: HRS §103D-701)

§3-126-4 Request for information. Any additional information requested by any of the parties should be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. Failure of any party to comply expeditiously with a request for information by the chief procurement officer or the head of a purchasing agency may result in resolution of the protest without consideration of any information which is not filed within the established time period.  
[Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-701)  
(Imp: HRS §103D-701)

§3-126-5 Stay of procurements during protest. When a protest has been filed within five working days pursuant to section 3-126-3 and before an award has been made, the chief procurement officer or the head of a purchasing agency shall make no award of the contract until the protest has been settled, unless the chief procurement officer makes a written determination, after consulting with the head of the using agency or the head of the purchasing agency, that the award of the contract without delay is necessary to protect substantial interests of the State.  
[Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-701)  
(Imp: HRS §103D-701)

§3-126-6 Making information on protests available. The chief procurement officer or the head of a purchasing agency shall, upon written request, make available to any interested party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or rules. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted, and indicating on the front

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page of each document that it contains such information. [Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-701) (Imp: HRS §103D-701)

53-126-7 Decision by the chief procurement officer or the head of a purchasing agency. (a) A decision on a protest shall be made by the chief procurement officer or the head of a purchasing agency as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained, the available remedies include, but are not limited to, those set forth in subsection (b) and subchapter 4.

(b) In addition to any other relief, the chief procurement officer or the head of a purchasing agency shall award the protesting bidder or offeror the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorneys' fees, when a protest is sustained and the protesting bidder or offeror should have been but was not awarded the contract under the solicitation. [Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-701) (Imp: HRS §103D-701)

53-126-8 Request for reconsideration. (a) Reconsideration of a decision of the chief procurement officer or the head of a purchasing agency may be requested by the protestor, appellant, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modifications is deemed warranted, specifying any errors of law made or information not previously considered.

(b) Requests for reconsideration of a decision of the chief procurement officer or the head of a purchasing agency shall be filed not later than ten working days after receipt of such decision.

(c) A request for reconsideration shall be acted upon as expeditiously as possible. The chief procurement officer or the head of a purchasing agency may uphold the previous decision or reopen the case as such officer deems appropriate.

(d) The decision under subsection (c) shall be final and the protesting bidder or offeror shall be

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informed:

- (1) Whether the protest is denied or sustained; and
  - (2) If the protest is denied, the protestor's right to an administrative proceeding pursuant to subchapter 5.
- (a) The protesting bidder or offeror shall inform the State within five working days after the final decision if an administrative appeal will be filed. An appeal shall be filed within seven calendar days of the determinations under section 3-122-110, this section, or sections 3-126-12 and 3-126-16.  
[Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-701)  
(Imp: HRS §103D-701)

§§3-126-9 to 3-126-10 (Reserved).

## SUBCHAPTER 2

### AUTHORITY TO DEBAR OR SUSPEND

§3-126-11 **Application.** This subchapter applies to the debarment or suspension of persons from consideration for award of contracts imposed by the chief procurement officer or the head of a purchasing agency. [Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-702) (Imp: HRS §103D-702)

§3-126-12 **Suspension.** (a) After consultation with the affected using agency, the respective attorney general or corporation counsel, and, where practicable, the contractor or prospective contractor who is to be suspended, and upon written determination by the chief procurement officer or the head of a purchasing agency that probable cause exists for debarment as set forth in section 103D-702, HRS, a contractor or prospective contractor shall be suspended.

(b) A notice of suspension, including a copy of such determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall state that:

- (1) The suspension is for the period it takes to complete an investigation into possible debarment including any appeals of a

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- debarment decision but not for a period in excess of ninety days;
- (2) Bids or proposals will not be solicited from the suspended person, and if they are received, they will not be considered during the period of suspension; and
  - (3) If a hearing has not been held, the suspended person may request a hearing in accordance with section 3-126-14.
- (c) The notice of suspension shall signal the start of the investigation for debarment.
- (d) A contractor or prospective contractor is suspended upon issuance of the notice of suspension. The suspension will remain in effect during any appeals. The suspension may be ended by the officer who issued the notice of suspension, an administrative hearings officer, or by a court, but otherwise shall only be ended when the suspension has been in effect for three months or a debarment decision takes effect.
- [Eff DEC 15 1995 ] (Auth: HRS §§103D-202, 103D-702, 103D-709) (Imp: HRS §§103D-702, 103D-709, 103D-710)

**§3-126-13 Notice of debarment action. (a)**

Written notice of the proposed debarment action shall be sent by certified mail, return receipt requested, to the contractor or prospective contractor. This notice shall:

- (1) State that debarment is being considered;
- (2) Set forth the reasons for the action;
- (3) State that if the contractor or prospective contractor so requests, a hearing will be held, provided such request is received by the chief procurement officer or the head of a purchasing agency within ten calendar days after the contractor or prospective contractor receives notice of the proposed action; and
- (4) State that the contractor or prospective contractor may be represented by counsel.

(b) The notice shall be sent to the respective attorney general or corporation counsel and the affected using agency. The affected using agency is that agency that has used the goods, services, or construction supplied by the contractor. If more than one affected using agency is involved, the chief procurement officer or the head of a purchasing agency may designate one or more representatives to be

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